

United States Bankruptcy Court  
for the District of Columbia  
333 Constitution Avenue, NW  
Washington, DC 20001

March 8, 2006

By Electronic Transmission

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Judicial Conference of the United States  
Washington, DC 20544

Re: Bankruptcy Rule 4004: Need for it to Fix  
Deadline for Filing a Motion Under § 727(a)(12)

Dear Mr. McCabe:

As I explain in a separate letter of this date addressing F.R. Bankr. P. 2002(f), 11 U.S.C. §§ 102(1) and 727(a)(12) contemplate that notice will be given to creditors of the opportunity to request a ruling under § 727(a)(12). Interim Rule 4004(c)(1) treats a motion as being the vehicle for raising a § 727(a)(12) request to delay the entry of discharge under § 727(a)(12). However, neither Rule 4004 nor any other rule sets a deadline for the filing of such a motion. I suggest that Rule 4004 be amended to provide that such a motion may be filed at any time before the court grants a discharge.

Set forth on the following pages are proposed revisions to F.R. Bankr. P. 4004 to accomplish this, with additions indicated by underlining and deletions indicated by strikeout. Some of the changes are already in the Interim Rule. Where I have made changes beyond those of the Interim Rule, they are additionally highlighted.

Giving creditors until the discharge is granted to file a motion to delay the debtor's discharge has two benefits:

- There will be no necessity to address enlargements of the time for filing such a motion. If Rule 4004 were amended to set some other deadline, there would be a necessity for addressing enlargements of the time for filing such a motion.
- By giving creditors until the discharge is entered to file a motion under § 727(a)(12), the clerk will never run afoul of the statutory requirement of "notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge." If Rule 4004 were amended to set some other deadline, there would be a risk that the clerk would not grant the discharge within 10 days after the deadline expires.

#### **Rule 4004. Grant or Denial of Discharge**

(a) TIME FOR FILING COMPLAINT OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED.

In a chapter 7 ~~liquidation~~ case, a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors under § 341(a). In a chapter 11 ~~reorganization~~ case, the complaint shall be filed not later than the first date set for the hearing on confirmation. At least 25 days notice of the times so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

(b) TIME FOR FILING MOTION TO DELAY ENTRY OF DISCHARGE; NOTICE OF TIME FIXED.

A motion to delay entry of the discharge under § 727(a)(12), § 1141(d)(5)(C), § 1228(f), or § 1328(h) of the Code may be filed at any time prior to the court's granting a discharge. At least 25 days notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

~~(b)~~ (c) EXTENSION OF TIME. On motion of any party in interest, after hearing on notice, the court may extend for cause the time for filing a complaint objecting to discharge. The motion shall be filed before the time has expired.

~~(c)~~ (d) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual,

(B) a complaint objecting to the discharge has been filed,

(C) the debtor has filed a waiver under § 727(a)(10),

(D) a motion to dismiss the case under § 707 is pending,

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending,

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)~~(1)~~ is pending, or

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference

of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

(H) the debtor has not filed with the court a statement regarding completion of a course in personal financial management as required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending; or

(J) a presumption that a reaffirmation agreement is an undue hardship has arisen under § 524(m); or

(K) a motion to delay discharge, alleging that the debtor has not filed with the court all tax documents required to be filed under § 521(f), is pending.

\* \* \* \* \*

(3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the filing of the statement.

Sincerely yours,

/s/

S. Martin Teel, Jr.

United States Bankruptcy Judge  
for the District of Columbia

Copies to:

Gregory Hughes  
Acting Clerk  
United States Bankruptcy Court  
for the District of Columbia

Patti Meador  
Chief Deputy Clerk  
United States Bankruptcy Court  
for the District of Columbia